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Chairman: Mr. Mochochoro ..... (Lesotho)

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The meeting was called to order at 10.20 a.m.

Agenda item 156: Report of the United Nations Commission on International Trade Law on the work of its thirty-second session (A/54/17)

1. **Mr. Renger** (Chairman of the United Nations Commission on International Trade Law (UNCITRAL)) said that at its twenty-ninth session in 1996, the Commission had decided to prepare a legislative guide to assist States in preparing or modernizing legislation relevant to privately financed infrastructure projects. In undertaking the task, the Commission knew that private investment in infrastructure offered the opportunity to economize on public expenditure and achieve high levels of service, while at the same time enabling the private sector to redirect funds to other pressing social needs. The Commission also knew that in the developing countries and in the so-called economies in transition, privately financed infrastructure projects had increasingly attracted interest. It was a well-known fact that a stable and favourable legal framework was needed to obtain private capital to carry out the projects. The aim of the legislative guide would thus be to provide guidance to Governments and legislative bodies in reviewing the legislation, regulations and other legislative texts relevant to the carrying out of infrastructure projects. In addition, the guide would propose principles and policies that would help to attract private investment and at the same time serve to protect the public interest.

2. In the previous two sessions, the Commission had considered various chapters of the legislative guide, prepared by the Secretariat in conjunction with specialists in the field. At the current session, the Commission for the first time had before it the complete draft of the legislative guide, which consisted of nine chapters covering, inter alia, general legislative considerations; project risks and government support; selection of the concessionaire; the project agreement; infrastructure development and operation; end of project term, extension and termination; governing law; and settlement of disputes.

3. The Commission had discussed ways of conveying the purpose and scope of the guide more clearly. It had been suggested that it could be done by making reference to specific aspects of the requirements of the public and private sectors. With regard to the private sector, reference could be made to the need for certainty, stability and transparency, investment protection provisions and guarantees against interference by the contracting authority. With regard to the public sector, the guide could include the need to ensure continuity of the service, the observance of environmental and safety standards, monitoring of the project performance and the conditions under which a concession could be revoked.

4. The formulation of legislative recommendations for carrying out privately financed infrastructure projects was one of the subjects that had aroused great debate. By way of a general comment, it had been suggested that the number of legislative recommendations contained in the guide should be reduced and that the recommendations should be limited to matters of a clear legislative nature. As to the content of the recommendations, it had been generally agreed that it was not the purpose of the guide to impinge upon national sovereignty or to prescribe the contents of domestic legislation. The Commission had also agreed that the legislative recommendations in the guide should be based on the principles of transparency, fairness, openness and competition in a domestic legislative framework for privately financed infrastructure projects.

5. Another topic of discussion had been project risks and the common contractual solutions for risk allocation. The Commission had also analysed the power of the contracting authority in the allocation of risks; the power of a Government to acquire project assets through expropriation and compensation; and the forms of project support that might be provided by a Government.

6. Consideration had also been given to the various methods of selecting a concessionaire and it had been pointed out that adherence to competitive methods was necessary to counter improper practices and corruption as well as to obtain the best value for the host Government and the users of the facilities. It had been suggested that the UNCITRAL Model Law on Procurement of Goods, Construction and Services, which was based on the notion of competition, presented a suitable basis for devising selection procedures in privately financed infrastructure projects. It had been pointed out, however, that in some countries, privately financed infrastructure projects involved the delegation by a State entity of the right to provide a public service, which was basically different from the public procurement of goods in that it often placed the accent on the delegating body's freedom to choose the operator who best suited its needs, in terms of professional qualifications, financial strength, ability to ensure the continuity of the service, equal treatment of the users and quality of the proposal.

7. Questions pertaining to the end of project term, including extension and termination, had also been taken up. With regard to termination, the Commission had been urged to approach the issue with caution since the conditions of

compensation for termination were a controversial area in many countries. While the legislative guide could provide an indication as to standards of compensation that had been used in practice, it might not be advisable to attempt to formulate precise recommendations on that point.

8. The Commission had discussed dispute settlement procedures. The general observation had been made that the treatment of the matter in the legislative guide should be more geared towards privately financed infrastructure projects, drawing on practical experiences in various countries. Furthermore, it had been stated that different methods of dispute settlement should be elaborated for the different phases of a privately financed infrastructure project.

9. With regard to future work, the Commission had agreed that its secretariat should revise the draft text to reflect the suggestions and recommendations of the members of the Commission. The revised legislative guide would be considered at its thirty-third session.

10. As for other aspects of the Commission's work, it should be noted that, with a view to promoting the UNCITRAL Model Law on Electronic Commerce, the Commission had entrusted the Working Group on Electronic Commerce with the preparation of specific rules on electronic signatures. At its thirty-first session, the Commission had noted that the Working Group had had difficulty in reaching agreement on the new legal issues arising from the increased use of digital and other electronic signatures and in achieving a consensus on how to address those issues in an internationally acceptable legal framework.

11. During its most recent session, the Commission had expressed its satisfaction at the Working Group's efforts to prepare the draft uniform rules on electronic signatures. There had been general agreement that significant progress had been made in the understanding of the legal issues of electronic signatures, although the Working Group had had difficulty in building a consensus on the legislative policy to be adopted in that regard.

12. The comment had been made that Working Group had placed excessive emphasis on digital signature techniques and specific applications involving third-party certification. It had been suggested that work by the Working Group should be limited to the legal issues of cross-border certification or be postponed altogether until market practices were better established. Nonetheless, the prevailing view was that the Working Group should pursue its task on the basis of its original mandate, taking into account that, in many countries, guidance from UNCITRAL was expected by governmental and legislative authorities preparing legislation on the issue.

13. After considering the report of the Working Group, the Commission had reaffirmed its earlier decisions as to the feasibility of preparing uniform rules on electronic signatures and expressed its confidence that more progress could be accomplished by the Working Group at its forthcoming sessions. Although the Commission had not set a specific time-frame for the completion of the work, it had urged the Working Group to proceed expeditiously with the completion of the draft uniform rules. It had appealed to all delegations to renew their commitment to actively participate in seeking a consensus with respect to the scope and content of the draft uniform rules.

14. The Commission had also taken note of various suggestions with respect to the future work of the Working Group on Electronic Commerce. For example, a suggestion had been made to consider the actions necessary to ensure that references to such concepts as "writing", "signature" and "document" in conventions and agreements relating to international trade allowed for electronic equivalents. Other items suggested for future work included electronic transactional and contract law, electronic transfer of rights in tangible goods, electronic transfer of intangible rights and rights in electronic data and software.

15. It had been decided that, upon completing its current task, the Working Group would examine those items with a view to making more specific proposals for future work by the Commission.

16. The Commission had also briefly considered the progress achieved in the elaboration of the draft Convention on Assignment in Receivables Financing. The Commission had expressed its appreciation to the Working Group on international Contract Practices for the significant progress achieved. The Commission had noted that a number of specific questions remained to be addressed, for example, whether the draft Convention would apply only to assignments in a financing context or to other assignments as well; whether certain assignments, such as those involved in securities and clearing-house transactions, should be excluded or simply dealt with differently; whether anti-assignment clauses contained in public procurement contracts should be treated differently from such clauses in other types of contracts; whether priority with respect to proceeds of receivables should be treated in the same way as priority with respect to receivables; and whether the private international law rules should be used to fill gaps in the substantive law provisions of the draft Convention.

17. The Commission had requested the Working Group to proceed with its work expeditiously so as to make it possible for the draft Convention to be circulated to Governments for comments in good time and for the draft Convention to be considered by the Commission for adoption at its thirty-third session. With regard to the procedure to be followed, the Commission would decide at its next session whether it should recommend adoption by the General Assembly or by a diplomatic conference to be specially convened by the General Assembly for that purpose.

18. As for possible future work of the Commission and its secretariat, particularly with regard to arbitration legislation and practice and insolvency law, the Commission, at its thirty-first session, had decided that future work in the area of arbitration should be considered and had requested the Secretariat to prepare a note that would serve as a basis for the considerations of the Commission. At the current session, the Commission had had before it the requested note (A/CN.9/460) dealing with some of the issues and problems identified in arbitral practice in order to facilitate its discussions. It had considered that the time had arrived to assess the extensive experience with national enactments of the UNCITRAL Model Law on International Commercial Arbitration and the use of the UNCITRAL Arbitration Rules and the UNCITRAL Conciliation Rules, and to evaluate the acceptability of ideas and proposals for improvement of arbitration laws, rules and practices.

19. The Commission had decided to entrust the future work to a working group and requested the Secretariat to prepare the necessary studies. It had been agreed that the priority items for the working group should be conciliation, requirement of written form for the arbitration agreement, enforceability of interim measures of protection and possible enforceability of an award that had been set aside in the State of origin. It was expected that the Secretariat would prepare the necessary documentation for the first session of the working group for two or three of those topics.

20. An observer for ECE and two Vice-Chairpersons of the ECE ad hoc informal working group on international contract practices in industry had informed the Commission that a review was being conducted of the 1961 European Convention on International Commercial Arbitration in order to determine its continuing usefulness and the advisability of revising it. The Commission was concerned by the duplication of efforts and/or inconsistencies resulting from a lack of coordination and cooperation. Owing to the lack of resources, it was unlikely that the secretariat of UNCITRAL would accept the invitation to participate in the work currently being conducted by ECE on an ongoing basis. The Commission had emphasized that it was the core legal body within the United Nations system in the field of international trade law and the best suited to address that global issue. It had therefore appealed to ECE to concentrate on questions specific to its region or to the functioning of the 1961 European Convention and to leave other issues of general concern to be dealt with by the UNCITRAL Working Group on Arbitration.

21. The Commission had before it a proposal by Australia (A/CN.9/462/Add.1), which stressed the need to strengthen the international financial system in three areas: transparency, accountability and management of international financial crises by domestic legal systems. The proposal recommended that, in view of its universal membership and its established working relations with international organizations that had expertise and interest in the law of insolvency, the Commission was an appropriate forum to put insolvency law on its agenda. The proposal urged the Commission to consider entrusting a working group with the development of a model law on corporate insolvency to foster and encourage the adoption of effective national corporate insolvency regimes.

22. The Commission had expressed its appreciation for the proposal and had noted that different projects had been undertaken by other international organizations such as the International Monetary Fund (IMF), the World Bank and the International Bar Association on the development of standards and principles for insolvency regimes. The initiatives taken in those organizations were proof of the necessity of assisting States in reassessing their solvency laws and practices. The supreme governing body of IMF had requested it not only to continue its efforts in the area of legislation but also to cooperate closely with UNCITRAL, which enjoyed international renown in the matter of insolvency legislation on the basis of its 1997 Model Law on Cross-Border Insolvency. The Commission had expressed its gratitude for the work carried out by IMF and confirmed its readiness closely to cooperate, indicating, however that such initiatives required even closer coordination in order to avoid any duplication of work and to achieve consistent results.

23. The Commission had accepted a proposal from its secretariat which would involve devoting one session of a working group to identifying the appropriate manner of addressing the issues raised. The working group would select appropriate issues to be harmonized and modernized and would ascertain the best means of dealing with them through, for instance, a model law, model provisions, a set of principles or other text.

24. During its most recent session, the Commission had taken note of the work carried out under the system established for the compilation of case law on UNCITRAL texts (CLOUT). It had been noted that CLOUT was an important means of promoting the uniform interpretation and application of UNCITRAL texts.

25. Through its secretariat, the Commission had launched a broad information and assistance programme, in the belief that such activities were particularly useful for developing countries which lacked technical expertise in the areas of trade and commercial law, and that they generally played an important role in economic integration efforts being undertaken by many countries. Training and technical assistance activities were typically carried out through seminars and briefing missions designed to explain the salient features of UNCITRAL texts and the benefits to be derived from their adoption by States.

26. It was well known that the Commission, and its efficient secretariat, had greatly contributed to the development and harmonization of international trade law and was continuing to explore new areas in which its experience and expertise could contribute to economic development and legal security.

27. It was now universally accepted that economic development and economic opportunities were essential for achieving peaceful development and harmonious relations among States. New and developing economies should adopt market principles as a means of attaining prosperity and development. The international community was aware that investing in that process meant investing in peaceful relations and a stable future. Similarly, investing in UNCITRAL meant opting for a stable legal environment which would promote development and economic prosperity. For years, the Commission had been codifying a coherent body of international commercial law. The dissemination of shared knowledge, expertise and practices with respect to UNCITRAL texts might well contribute to improving significantly the capacity of Governments to establish a legal regime capable of attracting investments and eliminating obstacles to trade. For that purpose, the secretariat had launched a broad training and assistance programme which should allow for the dissemination of information on UNCITRAL texts and promote an exchange of experiences and practices. And yet, owing to the shortage of staff and resources, the secretariat had not been able adequately to respond to requests for training and technical assistance.

28. He noted with satisfaction the increased number of calls from all over the world requesting training and technical assistance services in relation to texts prepared by UNCITRAL and the CLOUT system. In his view, those valuable programmes should be continued and strengthened. The Commission had, however, also noted with concern that, owing to the growing volume of work, on the one hand, and the reduction of resources available to the secretariat on the other, the quality and standing of its work were at risk. Furthermore, the Commission was not free to request collaboration for its projects from its associates or sponsors, an option which, given the restrictions on public monies, could serve as a miraculous last resort. As a United Nations body composed of Governments and their representatives, UNCITRAL was committed to the public welfare and interest, which determined to what extent it could accept invitations from the public sector to implement joint projects. He expressed his hope that Governments and international organizations would recognize the need more widely to disseminate UNCITRAL texts and would pledge to promote training and assistance activities for the benefit of the developing countries that so needed them. The cost would be low in comparison with the initial investment made for the purpose of elaborating those texts.

29. Lastly, he recalled the statement made by the Secretary-General, on 7 September 1999, introducing the new study on the work of the United Nations in the development of international commerce. That study, which dealt with the United Nations and the international economic order and had been prepared by outside experts, expressly mentioned the value of the Commission's work in promoting the development and security of international commerce and highlighted the central role played by the Commission in harmonizing law. The study also observed that the foundations for a world code on trade law had been laid, and that the Commission would be the appropriate body to assume the task of unifying the various measures into a uniform regime. The study should spur the members of the Sixth Committee to lend greater support to UNCITRAL and its programmes and to promote the dissemination and acceptance of the conventions, model laws and other texts it had elaborated.

30. **Ms. Flores Liera** (Mexico), speaking on behalf of the Rio Group, stressed the professionalism with which the United Nations Commission on International Trade Law (UNCITRAL) fulfilled its mandate and said that the report introduced by its Chairman was proof of the degree of coordination and cooperation that the United Nations could achieve in considering issues of common interest. By keeping abreast of the legislative measures adopted by other bodies and coordinating its activities with theirs in order to avoid duplication in its discussions, the Commission was helping to rationalize its resources and to increase the

likelihood that compatible legal systems would be developed. She hoped that those practices would be maintained and strengthened in the future. The Rio Group was convinced of the benefits to be derived from a uniform trade system and would continue its efforts to achieve that goal. In that regard, she noted that Peru and Uruguay had become parties to the United Nations Convention on Contracts for the International Sale of Goods.

31. At its thirty-second session, the Commission had made significant progress in the preparation of a legislative guide to privately financed infrastructure projects and already had before it a complete draft of the guide. The Rio Group was following with interest the work carried out in that area, which would help to promote private-sector investment in public infrastructure projects. It was important for the final version to achieve a balance between the interests of investors and those of the host country and for the guide to be written in flexible language in order to facilitate the incorporation of its provisions into the various national legislations.

32. The draft convention on assignment in receivables financing was of particular importance to the Rio Group. The establishment of a uniform set of rules in that area would make it possible to increase the availability of credit at favourable rates of interest and to improve the competitiveness of entrepreneurs from developing countries. Despite the remaining differences of opinion on certain aspects of the instrument, the Rio Group hoped that the Commission would conclude its consideration of the topic no later than 2000.

33. The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, to which there were already 121 States parties, was among the most nearly universal of the legal instruments developed by the Commission. The Rio Group recognized the Commission's follow-up activities and its interest in considering issues related to arbitration which had not been given sufficiently clear treatment in international law. It was in favour of the Commission's consideration of the items listed in paragraph 380 of its report; however, any conclusion arrived at should not weaken, but should rather help to strengthen and to improve the implementation of, the regime established in the New York Convention. The Rio Group was concerned at the delays in publication of the UNCITRAL Yearbook in languages other than English, which hindered domestic consideration of the instruments developed by the Commission and affected their incorporation into national legislation. The standardization of international trade law was a sufficiently slow and complex process without adding additional delays. The Rio Group supported the Commission's appeal that the effective implementation of the UNCITRAL publication programme should be guaranteed and the Yearbook published in a timely fashion in all the languages envisaged.

34. UNCITRAL activities in the field of training and technical assistance were a valuable tool for the creation of a uniform trade regime. It was therefore a matter of great concern that the secretariat did not have sufficient resources to meet all the requests made of it in that regard. It had often been stated that the Organization's economies should not affect its fulfilment of its mandate; it was essential to guarantee the effective implementation of UNCITRAL programmes and to strengthen its human and financial resource capacities. The Rio Group valued the Commission's efforts to collect and disseminate case law on its texts and took note of the preparatory work carried out in the field of transport law. Any approach to that issue should take into account the needs of the various sectors involved in the transport of goods, the interests of States and the various national legal systems. It might be very useful to hold a colloquium for the exchange of ideas on that issue.

35. **Mr. Kawamura** (Japan) said that he appreciated the contribution made by the Commission to promotion of the progressive harmonization and standardization of international trade law. As the primary United Nations legal body in the field of international trade law, the Commission had been extremely productive in its work. Among its achievements were the United Nations Convention on Contracts for the International Sale of Goods, which had been adopted in Vienna in 1980 and to which 57 States had become parties; the Model Law on Electronic Commerce, adopted in 1996; and the Model Law on Cross-border Insolvency, adopted in 1997. Since the establishment of the Commission, his delegation had participated actively in its work and would continue to do so. He also paid tribute to the work of the legal experts who dealt with the legal and technical aspects of the issues addressed

36. He welcomed the progress achieved, with the help of the secretariat, in preparing a legislative guide on privately financed infrastructure projects and hoped that with the help of other international organizations, it would be possible to develop a guide that would be widely accepted and could be adopted during the thirty-third session of the Commission.

37. With respect to electronic commerce, the preparation of uniform rules on electronic signatures was of enormous importance and deserved close attention at the global level. In light of the rapid changes that had recently been occurring in the field of electronic commerce, he hoped that more progress would be made; in that process, it was important

to bear in mind the need to preserve the technical neutrality and independence of opinion of the parties concerned.

38. He noted with satisfaction the significant progress achieved by the Working Group on International Contract Practices in the area of assignment in receivables financing and fully supported the idea of developing a uniform law on that issue, which would facilitate the development of international trade and promote the availability of credit. However, he had certain reservations with respect to the application of the regime and considered that efforts should be made to develop, to the extent possible, a uniform regime rather than resorting to the hasty use of optional rules. His delegation hoped that discussion of the topic would be concluded before 2000, when the rules were scheduled for adoption. The possibility of including private international law rules should be considered in consultation with the Hague Conference on Private International Law.

39. His delegation agreed that priority should be given to consideration of the issue of international commercial arbitration and was prepared to participate actively in those discussions.

40. His Government had learned from the previous year's Asian financial crisis; one relevant lesson was that there was a need for strict regulations on insolvency and for consistency between national regulations in that area. Since each country had its own national system, particularly with respect to corporate law, it would not be easy to develop a uniform regime in that field. For that reason, careful consideration should be given to the viability and expected results of the project .

41. With regard to the issue of the scarcity of resources referred to by the secretariat and the Chairman of UNCITRAL, his delegation considered that, before strengthening the Commission, the time had come to identify specific ways of rationalizing its work. To that end, it proposed the following five measures. First, UNCITRAL should do everything possible to rationalize its work within the limits of the available resources. In that regard, it would be useful to find out if the measures adopted by the International Court of Justice, which was also suffering from shortage of human and financial resources, were applicable to UNCITRAL.

42. Second, UNCITRAL should consider the possibility of holding more meetings in Vienna, instead of New York, in order to reduce travel and per diem expenses. The tradition of alternating sessions in Vienna and New York could be maintained, but more meetings of the working groups could be held in Vienna. That would facilitate the work of the international trade law experts from missions located in Vienna.

43. Third, UNCITRAL should not for the time being attempt to examine new topics until it concluded the projects that were already under way.

44. Fourth, any duplication between the work of UNCITRAL and that of other bodies of the United Nations system should be avoided, since the fundamental objective of UNCITRAL was to promote efficiency and coherence in the unification and harmonization of international trade law.

45. Lastly, Governments should collaborate fully with UNCITRAL to facilitate its work. For example, their responses to the UNCITRAL secretariat's questionnaires would help speed up the Commission's work.

46. **Mr. Pfanzelter** (Austria) welcomed the attention given in the Secretary-General's report on the work of the Organization (A/54/1) to the harmonization and unification of international trade law and to the work of UNCITRAL in that area. Although he was aware of the budgetary constraints of the United Nations, he hoped that the importance of that work would be recognized and that the Commission's chronic lack of resources would be resolved.

47. At its thirty-second session, the Commission had focused on the preparation and examination of a draft legislative guide for privately financed infrastructure projects. Austria fully supported that work, in view of the importance, particularly for developing countries, of having a solid legal framework in order to attract private-sector investment. It had also supported the Commission's decision to prepare uniform rules on the legal issues of digital signatures and certification authorities, and was glad that UNCITRAL had urged the Working Group on Electronic Commerce to proceed expeditiously with the completion of the draft uniform rules. It welcomed the considerable progress of the Working Group responsible for preparing the draft Convention on assignment in receivables financing. It fully agreed that a working group should be created to discuss the possible future work of UNCITRAL in the area of international commercial arbitration, and was pleased that an order of priorities had been established with regard to the topics to be discussed. With regard to the European Convention on International Commercial Arbitration (Geneva, 1961), Austria believed that, in order to avoid duplication between the work of UNCITRAL and that of the European Economic Commission (EEC), UNCITRAL should approach the issue from a global perspective. It commended the UNCITRAL secretariat's effort to disseminate the work of the Commission, in particular through training seminars and technical assistance, and regretted that, owing to lack

of resources, many requests to participate in those seminars could not be accepted. Lastly, Austria emphasized the importance of the International Commercial Arbitration Moot held in Vienna each year.

48. **Mr. Biato** (Brazil) associated himself with the statement by the Mexican delegation on behalf of the Rio Group, and welcomed the three seminars that UNCITRAL had held in Brazil in 1999 and the fruitful collaboration that had been established between the UNCITRAL secretariat and government authorities, businessmen, lawyers and legislators in Brazil provided evidence that the work of UNCITRAL contributed to the preparation of laws on electronic commerce. Proof of the fact was the legislation recently submitted to the Brazilian Congress. The seminars held in Brazil had also contributed to disseminating awareness of the UNCITRAL Model Law on Electronic Commerce and the guide to its enactment; both documents were already being widely distributed in Portuguese. In that respect, it was also important to underscore that the preparation of UNCITRAL model laws should continue with the greatest possible impartiality. The recent seminars had shown the importance of discussing the issue of digital signatures, and of businessmen, legislators, scientists and technicians playing an active part in the conceptual and practical development of the issue. His delegation welcomed the progress made in the preparation of the legislative guide for privately financed infrastructure projects, which would be particularly useful for developing countries. Lastly, Brazil believed that the work of UNCITRAL in the area of commercial arbitration was of great importance.

49. **Ms. Dickson** (United Kingdom) said that considerable progress had been made during the thirty-second session of UNCITRAL, particularly with regard to the legislative guide for privately financed infrastructure projects; that instrument was extremely necessary and it was to be hoped that the draft would be completed before the next session. As to the draft uniform rules on electronic signatures, it was to be hoped that the Working Group on Electronic Commerce would complete them at its next meeting in February 2001, so that UNCITRAL could approve them in June or July. The United Kingdom would take an active part in the preparation of the draft Convention on assignment in receivables financing, which was also being finalized, and which would be the focus of attention at the Commission's thirty-third session.

50. She was pleased to see that it had been decided to bring up the issue of arbitration again, although she did not agree that conciliation should be made a priority; however, she would maintain a constructive attitude. Lastly, the United Kingdom was open with regard to the possible future work of UNCITRAL on cross-border insolvency and agreed with the Commission's decision to entrust the issue to a single working group, which would meet in December.

51. **Mr. Hakapää** (Finland), speaking also on behalf of Denmark, Iceland, Norway and Sweden, said that it was important to provide the UNCITRAL secretariat with sufficient resources for it to carry out its tasks. UNCITRAL was currently finalizing three large-scale projects: the legislative guide on privately financed infrastructure projects; the draft Convention on assignment in receivables financing; and the draft uniform rules on electronic signatures. The first project, which had been the main theme of the thirty-second session of the Commission, would have to be sufficiently broad to meet the diverse requirements of the various national bodies of legislation, and therefore must avoid excessive detail which could lead States to refrain from participating in infrastructure projects. Prospects for the universal acceptance of the uniform rules on electronic signatures would no doubt be worsened if the completion of the rules were to be further delayed. On the other hand, the work that UNCITRAL was doing in the field of arbitration was essential to the elaboration of rules in that field and should continue. Finally, international regulation of transborder insolvency was becoming increasingly important. His delegation therefore welcomed the fact that a working group had been assigned the task of preparing a feasibility study on that subject.

52. **Mr. Abdullah** (Malaysia) expressed satisfaction with the work done by UNCITRAL on the drafting of the legislative guide on privately financed infrastructure projects, which could be of great assistance to the developing countries. The guide should strike a balance between the objective of attracting private investment for infrastructure projects and that of defending the interests of the host Government and users of the infrastructure. The draft should be made more readable and, because of the differences between the different legal systems, it should offer a range of alternative policy options. The legislative recommendations should also be reformulated so as to allow the guide to be more universally applicable. As for section B of the introductory chapter, his delegation considered that in defining the concepts of "public infrastructure" and "public services", it should be remembered that they had different meanings in various legal systems. Regarding chapter VIII on the settlement of disputes, he agreed with UNCITRAL that the chapter should include disputes settlement methods relating to privately financed infrastructure projects, and should take advantage of the experience gained by various countries in that field. His delegation also agreed that the chapter should not give detailed information on dispute settlement methods that were

not sufficiently tailored to the subject of the draft legislative guide. Similarly, he agreed that the UNCITRAL secretariat should continue to employ experts to examine all the legislative recommendations, so as to ensure greater coherence. The opinions of outside experts from industrialized and developing countries and those with transitional economies should also be taken into consideration.

53. The draft uniform rules on electronic signatures must follow the neutral approach adopted in the UNCITRAL Model Law on Electronic Commerce. No deadline should be imposed on the Working Group on Electronic Commerce; it should be permitted to draft uniform rules that were universally acceptable.

54. He noted that the high cost of assignment in receivables financing was a serious obstacle to international trade, as it denied the developing countries, which were the main borrowers, access to low-cost credit. The draft Convention on assignment in receivables financing had the potential of increasing the availability of credit at more affordable rates for the developing and less advanced countries.

55. The system for the collection and dissemination of case law on UNCITRAL texts (CLOUT) was very useful and he had no reservations about joining others in requesting that more resources should be made available to UNCITRAL, including a significant increase in staff, so as to permit that system to operate effectively. Finally, his delegation considered UNCITRAL training and technical assistance to be particularly useful for developing countries which lacked technical resources in the fields of trade and trade law. Such assistance could make a decisive contribution to the economic integration of many countries, and some members of the Association of South-East Asian Nations (ASEAN) could benefit greatly from it. It was therefore unfortunate that in the current year UNCITRAL had for lack of funding been obliged to reject various requests from developing countries which would have liked to take part in seminars. His delegation joined in the call for the developed countries, international organizations and interested institutions to contribute to the funding of UNCITRAL training and technical assistance programmes so that developing countries could participate in them.

56. **Mr. Mirzaee-Yeagejeh** (Islamic Republic of Iran) noted that UNCITRAL had in the last three decades worked effectively and had played a significant part in the elaboration of a body of rules governing trade relations among nations. He trusted that it would be able to play a still more important role in the age of globalization.

57. The Islamic Republic of Iran was satisfied with the progress made on the legislative guide on privately financed infrastructure projects, and hoped that the task would be concluded at the Commission's next session. It would certainly be a useful instrument which would assist Governments in revising and updating their own legislation on that question. While the structure of the legislative guide was generally satisfactory and its chapters covered most of the main questions of importance, it was crucial to maintain an appropriate balance between the objective of attracting private investment to fund infrastructure projects and that of protecting the interests of the host Government and the users of the facilities. That was essential if the project was to be attractive for both the private and the public sectors.

58. The current draft chapters offered various options allowing national legislatures to take into consideration the realities of each country when implementing the legislative recommendations; that criterion should continue to be applied, as it implied recognition of the fact that each State had its own legal culture. Nevertheless, as the Commission had concluded, the secretariat should examine the recommendations as a whole so as to ensure that there was greater cohesion and harmony among them.

59. Various issues remained to be resolved with regard to the uniform rules for assignment in receivables financing, including the question of whether the draft Convention would be applicable to assignments made in a financial context or to other types of assignments. The Working Group on International Contract Practices should try to find generally acceptable solutions and to complete the draft guide in time for it to be distributed to Governments so that they could make their observations and the Commission could adopt the guide at its thirty-third session.

60. As for the uniform rules on the legal issues of digital signatures and certification authorities, commendable progress had been achieved in defining the relevant legal aspects, despite the difficulties encountered by the Working Group on Electronic Commerce as it attempted to reach consensus on the legislative policy on which the rules should be based. Pursuant to the Commission's recommendation, the Working Group should continue its efforts to arrive at a general agreement on the scope and content of the draft.

61. The secretariat was making commendable efforts in the fields of training and technical assistance, and should keep them up. It was essential to disseminate knowledge of the Conventions, model laws and guides prepared by the Commission so as to ensure that they were better understood, which would in turn facilitate their universal acceptance. The Islamic Republic of Iran therefore supported the

Commission's recommendation that the human and financial resources assigned to its secretariat should be increased.

62. Finally, he said that the scant participation of the developing countries in the Commission's activities and its working groups was a matter of concern. In an age of globalization the participation of such countries was crucial, and both the Commission and the General Assembly should increase their efforts to make it possible.

63. **Mr. Colas** (France) said that the draft legislative guide on privately financed infrastructure projects was yet another UNCITRAL contribution to the harmonious development and prosperity of nations. He welcomed the fact that diversity among the principal legal models had been highlighted in the Commission's report and taken into account in the draft guide. That diversity was an asset which UNCITRAL should put to use when it considered other texts, such as the draft Convention on Assignment in Receivables Financing.

64. UNCITRAL should not only seek harmonization and unification of international trade law but also provide technical assistance to States which decided to accept the instruments approved by the Commission. As stated in chapter IX of the report, limited resources were a factor preventing the Commission from fully implementing its mandate. Moreover, delays in the translation of documents hampered preparations and affected the quality of the work carried out by the Commission and its working groups. His delegation believed it was necessary to remedy that situation and supported the report's conclusions on the need to allocate adequate resources to UNCITRAL. The Commission might be forced to resort to private funding, a situation which would jeopardize its independence and, consequently, the quality of its activities.

65. **Mr. Witschel** (Germany) said that the UNCITRAL report was of great interest to Governments and to all involved in international commerce and international trade law. Thanks to the Commission, the United Nations was able to play an active role in reducing international trade barriers that were due to disparities in national laws. His delegation shared the expectation expressed by the Chairman that the Commission would adopt the final version of the legislative guide in the year 2000. That was all the more important in view of the significance of the project for many countries with different economic and social systems, given the backdrop of a drastically and rapidly changing international economic situation and the draft's importance in encouraging private investment. He noted with satisfaction that the Commission had confined itself to making recommendations and comments rather than formulating model agreements. The actual and legal conditions of infrastructure projects in the various countries required special responses to specific technical, financial and legal problems, and for that reason it was necessary for the guide to be limited to recommendations rather than to attempt to define general legal provisions.

66. His delegation was pleased that the Commission expected to conclude its work on the draft Convention on Assignment in Receivables Financing in 2000 and welcomed the news that there would be no duplication with other projects relating to the harmonization of the rules of international law. The draft had received recognition from both the business sector and the academic world, and all the parties involved expected the work to conclude the following year. He was confident that the Commission would fulfil those expectations.

67. With regard to electronic commerce, his delegation was less optimistic because it had noted the two schools of thought with widely differing views as to the goals to be achieved in the working group. Delegations which had previously favoured the inclusion of the electronic commerce project in the Commission's work programme now proposed discontinuing the work, and those who had harboured doubts over the work on electronic signatures were now resolutely in favour of its continuation. In that context, he pointed out that many countries regarded the UNCITRAL Model Law on Electronic Commerce as a benchmark which needed to be amended to include norms on electronic signatures. His delegation shared that interest and believed that the Working Group should continue on its path before taking on new topics in the area of electronic commerce.

68. The importance and reputation of UNCITRAL were apparent from the desire of the International Monetary Fund to consider jointly with the Commission the preparation of a model law on insolvency. He supported the decision of the Commission to honour the Fund's request but cautioned against exaggerated expectations. The insolvency law of each country was inseparable from its overall legal system. A unified model law must therefore be limited in scope, as had been the case in the preparation of the UNCITRAL Model Law on Cross-Border Insolvency and during the European harmonization efforts. Accordingly, the elaboration of general principles as a guideline for the formulation of national laws on insolvency would be an appropriate step ahead. His delegation was confident that it would form the basis for the development of productive cooperation between UNCITRAL, the International Monetary Fund and other interested parties.

69. The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) was one of the few international conventions with almost universal acceptance. The questions not addressed in that Convention were not new. They had long been known and had been excluded from earlier conventions either because they were considered not urgent or because they were deemed inappropriate for regulation in an international framework. In view of the limited resources available, priority should not be placed on further work in the area of international commercial arbitration. His delegation endorsed the Commission's proposal whereby the review of the European Convention on International Commercial Arbitration (Geneva, 1961) in the Economic Commission for European and the work performed by UNCITRAL would be coordinated, with a view to avoiding duplication by United Nations bodies.

70. UNCITRAL owed its universal reputation largely to the commitment of the Secretariat, which had spared no effort in preparing meetings and drafting documents. Nevertheless, it seemed that the volume of work exceeded the capacity of the Secretariat, and it was regrettable that documents had been published late owing to a backlog of translations. The Secretariat needed additional personnel and resources to keep up not only with the Commission and its working groups but also with the increasing number of requests for training and technical assistance, as well as the publication of UNCITRAL texts, particularly the UNCITRAL Yearbook.

71. Although many national and international, governmental and non-governmental institutions submitted requests for cooperation to the Secretariat, UNCITRAL was a commission established by the United Nations and comprising representatives of Member States, a fact which the Secretariat should bear in mind when cooperating with individual institutions. The work of UNCITRAL and the Secretariat was particularly important given the rapidly changing global economy. He hoped that the Commission would continue along its present path and would be allocated the resources it needed to accomplish its task.

72. **Mr. Tarabrin** (Russian Federation) paid tribute to the work of UNCITRAL as one of the United Nations bodies which had produced tangible results. Thanks to the efforts of the Secretariat and the collaboration of external experts and international consultants, the Commission had before it the draft legislative guide on privately financed infrastructure projects. The rules on guarantees for potential domestic or foreign investors were of deep interest to the Russian Federation, which endeavoured to provide a favourable climate for investment.

73. The establishment and development of international legal rules to regulate electronic commerce was of increasing importance to international development in the information age, characterized by rapid change in all aspects of human activity. The Russian Federation was conscious of that reality and supported the work of the Commission and its working groups with respect to the draft uniform rules on electronic signatures, which was becoming a highly useful document. He hoped that the Commission would speed up work on the uniform law on assignment in receivables financing and approve the draft at its thirty-third session.

74. The work of the UNCITRAL secretariat was essential in order to achieve the objectives established, in particular the publication, training and technical assistance activities, including the organization of regional seminars and symposia with the participation of countries that were integrating into the global economy. Accordingly, the secretariat must be provided with sufficient staff and resources.

75. He expressed the hope that UNCITRAL, as juridical and coordinating organ of the United Nations system in the area of international trade law, would continue to contribute to the development of that very important and increasingly pertinent sector of law for the benefit of the entire international juridical community.

76. Finally, he drew attention to the need for careful preparation of the list of speakers. His delegation had registered with the Committee secretariat at the appropriate time, stating that it wished to speak at the start of the meeting but, for reasons which no one had been able to explain satisfactorily, its name had not been on the list. Perhaps it would be a good idea for delegations to take the floor at meetings to request that they be included on such lists. He expressed the hope that the secretariat would make sure that such organizational problems did not occur again.

77. **Mr. Gao Feng** (China) said that the main items dealt with at the thirty-second session of UNCITRAL reflected the various new issues that were arising in the area of international trade and that called for unification and coordination among countries and regions. The participation of a large number of experts, researchers and government officials had not only contributed to the resolution of many of those problems, but had also underscored the authority and importance of UNCITRAL. His Government was satisfied with the outcome of the session and expressed its gratitude to the secretariat for its efficiency.

78. In order for the rules of international trade to have greater impact, when formulating international conventions and model laws UNCITRAL should, in future, take greater

account of the specific conditions of the developing countries and include all proposals from such countries. However, in order to foster greater dissemination of international trade law, UNCITRAL should strengthen its technical assistance and training activities for developing countries. His Government would support UNCITRAL's efforts and would work tirelessly to help achieve its objectives.

79. **Mr. Norman** (Canada) took note with great interest of the Commission's decision to convene a session of the Working Group on Arbitration for the coming year. His delegation considered that the proposed work on arbitration was both necessary and timely. In Canada, national legislation on insolvency was being reviewed and the Commission's work on the matter would therefore be of great interest to his delegation and it would participate in the process. His delegation continued to support and participate in the work on electronic commerce and, given that the uniform Law Conference of Canada had just adopted a uniform Electronic Commerce Act based on the UNCITRAL Model Law, deliberations conducted in the working group would be very useful for Canada's legislative work.

80. His delegation had participated actively in the work of the Commission regarding the draft convention on assignment in receivables financing, and it considered that the uniform rules would be of great importance. He drew attention to what UNCITRAL had achieved to date and said that on the threshold of the twenty-first century it was important to encourage States to have a vision of the future and to support the Commission's work strongly.

81. **Mr. Hetesy** (Hungary) welcomed the results achieved in the preparation of a legislative guide on privately financed infrastructure projects, for Hungary had received a considerable volume of private capital in the last two years and would, in future, participate more often in the financing of build-operate-transfer projects. Such projects were extremely complex because of the difficulties posed by the differences that existed between the different legal, administrative, and economic systems and the risks stemming from changes in the economic environment. The legislative guide would make it possible to adopt a common methodology; however, the success of those projects would, in the final analysis, depend on the way in which the respective legislatures, Governments and other authorities translated the concepts formulated in the guide into a mechanism that took account of local and international realities. In order for national legislation to produce positive results it would be necessary to take due account of the principles of equity, transparency, openness, and competition. At the same time, the guide would have to be flexible so that it could include those principles in the national legislation.

82. The question of assignment in receivables financing was one of the most important items on the Commission's agenda, and adoption of the convention would make it possible to achieve a certain degree of uniformity on the subject. Since the convention could help eliminate or at least limit the competitive disadvantages of developing countries and also of some transition economies, he appealed for rapid progress in that area. He noted that there still remained some issues to be resolved, particularly those relating to the scope of the convention. Nonetheless, his delegation supported the Commission's decision to continue with the preparation of the draft so as to be able to consider it at the thirty-third session.

83. With regard to electronic commerce and, more specifically, the uniform rules on electronic signatures, his delegation welcomed the progress made by the working group, and supported the decision of the Commission to reaffirm the feasibility of preparing uniform rules on the subject.

84. With regard to insolvency legislation Hungary as a member of the International Monetary Fund and the World Bank shared the view of those international organizations that, in order to respond to the recent financial crises it was necessary to adopt new measures and, *inter alia*, to strengthen financial accountability. To do so, it would be necessary to facilitate the task of countries in establishing more unified insolvency and debtor-creditor regimes. It would be necessary to emphasize strengthening of coordination with other international organizations which had already undertaken to work on the subject.

85. His delegation again stressed that better use should be made of the documents and information gathered by UNCITRAL. It expressed its gratitude for the ongoing development of the programme for the dissemination of case law on UNCITRAL texts (CLOUT) and renewed its support for strengthening the Commission secretariat, given the increase in the latter's workload. In that connection, he noted with concern that the proposed programme budget for the biennium 2000-2001 did not propose any increase in resources for the secretariat.

The meeting rose at 12.35 p.m.